

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

SMART SKINS LLC,

Plaintiff,

V.

MICROSOFT CORPORATION,

Defendant.

CASE NO. 2:15-CV-00544-MJP

## JOINT STATUS REPORT AND DISCOVERY PLAN

Pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rules 16 and 26(f), and the Court's Order Regarding Initial Disclosures, Joint Status Report, And Early Settlement (ECF No. 37), the parties in the above-entitled action submit the following Joint Status Report and Discovery Plan.

### **1. Nature and Complexity of Case**

In this case, Plaintiff Smart Skins alleges that Surface and Lumia tablets and certain products sold by Microsoft for use therewith infringe certain claims of U.S. Patent Nos. 7,079,864 and 6,920,338. Smart Skins alleges that Microsoft's alleged infringement from September 28, 2012 to present was willful. Microsoft denies infringement, denies willfulness, and asserts that Smart Skins' two asserted patents are invalid. For purposes of case management planning, the parties agree this is a standard patent infringement case in terms of its complexity.

**JOINT STATUS REPORT AND DISCOVERY PLAN - 1  
CASE NO. 2:15-CV-00544-MJP**

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1    **2. Proposed Deadline for Joining Additional Parties**

2    The parties propose that any additional parties be joined on or before August 21, 2015.

3    **3. Parties' Consent to Magistrate Judge**

4    The parties do not consent to proceed before a magistrate judge.

5    **4. Discovery Plan**

6    **A. Initial Disclosures**

7    The parties exchanged initial disclosures on May 14, 2015.

8    **B. Subjects, Timing, and Potential Phasing of Discovery**

9    The parties intend to conduct discovery on infringement, validity and damages. The parties  
10 do not believe discovery should be bifurcated or phased. The parties propose the following  
11 schedule, which allows for an order on claim construction in November 2015:

<b>Deadline Description</b>	<b>Proposed Deadline</b>
Disclosure of Asserted Claims and Infringement Contentions [Local Patent Rule 120]	June 4, 2015
Disclosure of Non-Infringement and Invalidity Contentions [Local Patent Rule 121]	July 9, 2015
Proposed Terms for Construction Exchanged [Local Patent Rule 130(a)]	July 23, 2015
Preliminary Claim Constructors and Extrinsic Evidence Exchanged [Local Patent Rule 131(a, b)]	August 6, 2015
Exchange Opening Expert Reports on Claim Construction Issues (including any authenticating declaration)	August 20, 2015
Exchange Rebuttal Expert Reports on Claim Construction Issues (including any authenticating declaration)	September 3, 2015
Joint Claim Construction Submission [Local Patent Rule 132]	September 8, 2015
Completion of Claim Construction Discovery [Local Patent Rule 133]	October 1, 2015
Opening Claim Construction Brief [Local Patent Rule 134(a)]	October 15, 2015
Responsive Claim Construction Brief [Local Patent Rule 134(c)]	October 29, 2015

1	Claim Construction Hearing [Local Patent Rule 135]	At the Court's convenience, on or after November 9, 2015
2	Defendant Advice of Counsel Disclosures [Local Patent Rule 140]	January 8, 2016
3	Close of Fact Discovery	March 8, 2016
4	Exchange Opening Expert Reports on issues for which a party bears the burden of proof	April 8, 2016
5	Exchange Rebuttal Expert Reports	May 9, 2016
6	Close of Expert Discovery	May 30, 2016
7	Deadline for Filing Dispositive Motions	June 20, 2016
8	Jury Trial (7-10 days)	At the Court's convenience in September 2016
9		
10		
11		

12           **C. Electronically Stored Information (“ESI”)**

13       The parties intend to adopt a modified version of the Court’s Model Agreement Regarding  
14      Discovery of Electronically Stored Information.

15           **D. Privilege Issues**

16       The parties have adopted the clawback agreements provided in the Court’s Model  
17      Agreement Regarding Discovery of Electronically Stored Information and Model Stipulated  
18      Protective Order.

19           **E. Proposed Limitations on Discovery**

20       All limitations on discovery imposed under the Federal Rules of Civil Procedure and Local  
21      Civil Rules shall apply to this case.

22           **F. Discovery Related Orders**

23       The parties intend to adopt modified versions of the Court’s Model Stipulated Protective  
24      Order and Model Agreement Regarding Discovery of Electronically Stored Information.

1       **5. Parties' Views, Proposals, and Agreements per LCR 26(f)(1)**

2       **A. Prompt Case Resolution**

3           The parties believe that mediation should occur after the Court issues a claim construction  
4 ruling in the case.

5       **B. Alternative Dispute Resolution**

6           The parties agree to private mediation as the ADR method for this case.

7       **C. Related Cases**

8           There are no related cases pending in this or any other jurisdiction of which either party is  
9 currently aware.

10       **D. Discovery Management**

11           The parties agree to abide by the limitations on discovery imposed under the Federal Rules  
12 of Civil Procedure and Local Civil Rules; share discovery information obtained from third parties;  
13 and coordinate the schedule for depositions in advance of setting such dates.

14       **E. Anticipated Discovery Sought**

15           The parties intend to conduct discovery on infringement, validity and damages.

16       **F. Phasing Motions**

17           Except as described here or in the Local Patent Rules, the parties do not currently believe  
18 that phasing motions will facilitate early resolution of potentially dispositive issues.

19       **G. Preservation of Discoverable Information**

20           The parties have not identified any issues relating to the preservation of discoverable  
21 information and the scope of the preservation obligation.

22       **H. Inadvertent Production / Privilege**

23           The parties have adopted the clawback agreements provided in the Court's Model  
24 Agreement Regarding Discovery of Electronically Stored Information and Model Stipulated  
25 Protective Order.

1           **I. Model Protocol for Discovery of ESI**

2           The parties intend to adopt a modified version of the Court's Model Agreement Regarding  
3           Discovery of Electronically Stored Information.

4           **J. Alternatives to Model Protocol**

5           None.

6           **Completion of Discovery**

7           The parties believe that fact discovery can be completed within 75 days of issuance of the  
8           Court's Claim Construction Order, and that expert discovery can be completed within 150 days of  
9           the issuance of the Court's Claim Construction Order. The proposed schedule, set forth above,  
10          generally seeks to implement those intervals.

11          **7. Bifurcation**

12          The parties agree that bifurcation is not appropriate.

13          **8. Pretrial Statements**

14          The parties do not wish to dispense with pretrial statements or pretrial orders required by  
15          Local Civil Rules 16(e), (h), (i), and (k), and 16.1.

16          **9. Individualized Trial Program**

17          The parties do not intend to utilize the Individual Trial Program set forth in Local Civil Rule  
18          39.2.

19          **10. Other Suggestions**

20           **A. Service by Electronic Means**

21          The parties agree that courtesy copies of all documents, including motions, discovery  
22          requests and responses, shall be sent to one another via electronic mail (or FTP transfer), and that  
23          such transmission shall be accepted as service in accordance with Fed. R. Civ. P. 5(b)(2)(E).

24          **11. Trial Date**

25          The parties believe this case will be ready for trial in September 2016.

1 **12. Jury or Non-Jury Trial**

2 Plaintiff has requested a trial by jury.

3 **13. Number of Trial Days Required**

4 The parties anticipate that trial in this matter will take 7-10 days.

5 **14. Trial Counsel Information**

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3 **15. Counsel Trial Unavailability**

4 Counsel for the Plaintiff is currently scheduled for trials on October 26, 2015 (estimated 5  
5 days), January 5, 2016 (estimated 8 days), February 16, 2016 (8 days), and October 31, 2016  
6 (estimated 2 weeks).

7 Counsel for the Defendant is currently scheduled for trials on September 7, 2015 (estimated  
8 5-6 weeks), October 3, 2016 (estimated 2-3 weeks), and February 27, 2017 (estimated 10 days).

9 **16. Confirmation of Service**

10 Defendant Microsoft Corporation has been served.

11 **17. Scheduling Conference Request**

12 The parties do not request a scheduling conference at this time.

13 **18. Corporate Disclosure Statements**

14 Plaintiff Smart Skins LLC filed its Corporate Disclosure Statement on April 22, 2015 (ECF  
15 No. 49).

16 Defendant Microsoft Corporation filed its Corporate Disclosure Statement on April 20, 2015  
17 (ECF No. 47).

18 **19. Video Recording of Hearings**

19 The parties do not consent to having hearings in this matter video recorded as part of the  
20 Judiciary's Pilot Project on Cameras in the Courtroom.

21 **20. Additional Information Under Local Patent Rule 110**

22 **LPR 110(6)** The parties do not currently have confidentiality concerns that would affect  
23 the disclosures contemplated in the local patent rules.

24 **LPR 110(7)** The parties do not believe a separate tutorial is necessary for this case, given  
25 the relative simplicity of the technology involved.

1           **LPR 110(8)** The parties believe discovery should be allowed before the disclosures  
2            required by Local Patent Rule 120, subject to the restrictions of the Federal  
3            Rules, Local Rules, and Local Patent Rules.

4           **LPR 110(9)** Smart Skins does not plan to seek a preliminary injunction or to file a  
5            dispositive motion before claim construction.

6           Microsoft may seek leave to file a motion for summary judgment of non-  
7            infringement before claim construction. Smart Skins would oppose any  
8            summary judgment briefing in advance of claim construction as premature,  
9            and will brief its opposition thereto in the event such a motion is filed.

10          Microsoft is also considering filing an inter partes review with the Patent  
11         Office. If Microsoft initiates an inter partes review, it may file a motion to  
12         stay this action. Smart Skins would oppose any delay of resolution of this  
13         case by such a stay requested by Microsoft, and will brief its opposition  
14         thereto in the event such a motion is filed.

15          **LPR 110(11)** The parties do not believe the Court should appoint an expert in this case,  
16         given the relative simplicity of the technology involved.

17          **LPR 110(12)** The parties do not currently envision the use of live testimony at the claim  
18         construction hearing, but will provide their final recommendations in the  
19         Joint Claim Chart pursuant to Local Patent Rule 132(f). Should either party  
20         rely on expert testimony addressing claim construction, the other party  
21         reserves its right to call and cross-examine that expert at the claim  
22         construction hearing.

DATED: May 21, 2015

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DATED: May 21, 2015

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 21st day of May, 2015.

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Denise Brandenstein, Legal Assistant